

EXHIBIT NO. 1

6
11-17-01

Docket Item # 7
SPECIAL USE PERMIT #2001-0098

Planning Commission Meeting
November 8, 2001

ISSUE: Consideration of a request for a special use permit to expand the existing restaurant to allow outdoor live entertainment.

APPLICANT: LNR Alexandria Limited Partnership, dba Hilton Alexandria Old Town
by Harry P. Hart, attorney

LOCATION: 1767 King St
Seagar's Restaurant
King Street MetroPlace Hilton Hotel

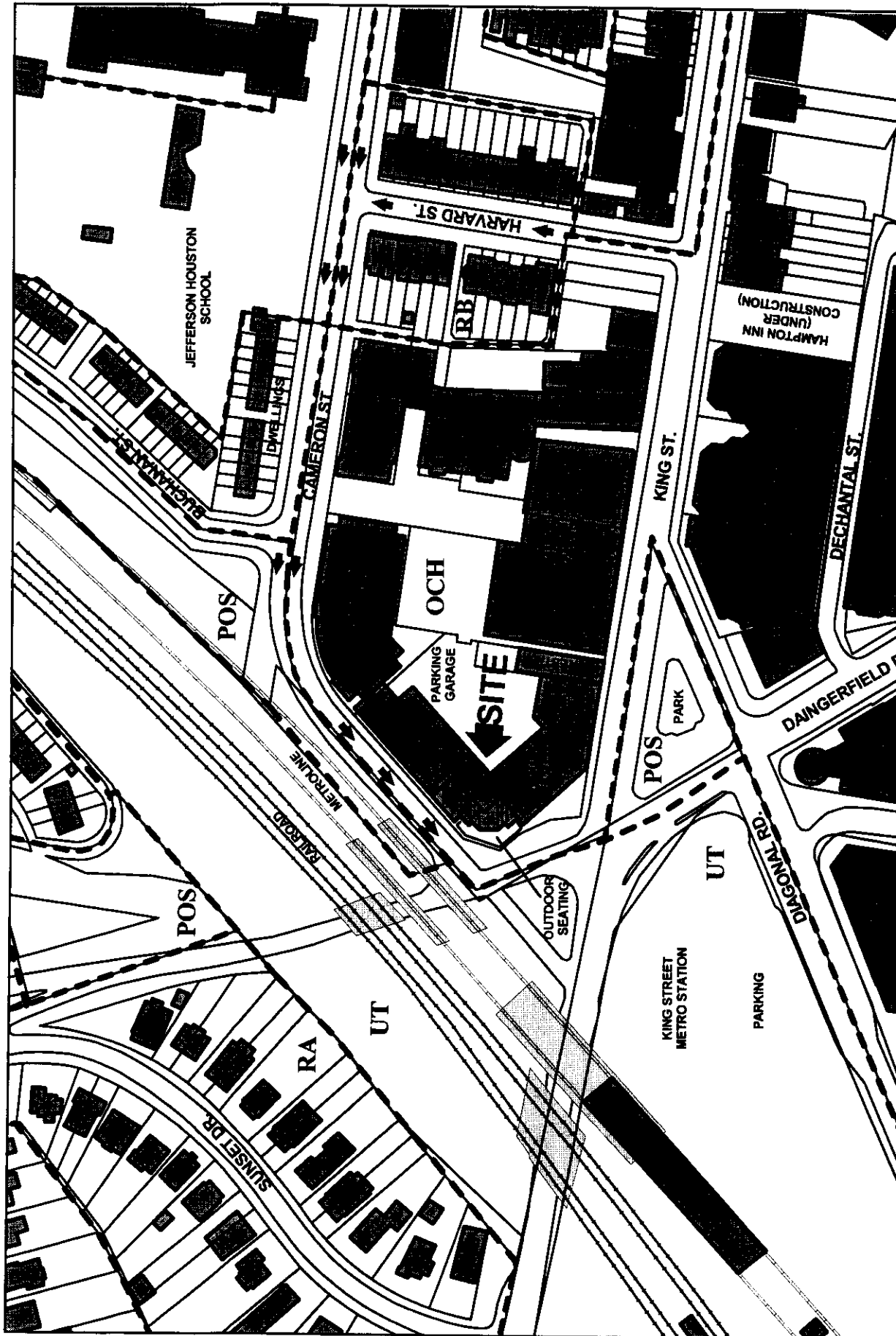
ZONE: OCH/Office Commercial High

PLANNING COMMISSION ACTION, NOVEMBER 8, 2001: On a motion by Mr. Komoroske, seconded by Mr. Robinson, the Planning Commission voted to recommend approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis.

Representation: Harry P. Hart, attorney for the applicant.

Speakers: No speakers.



SUP #2001-0098

11/08/01



STAFF RECOMMENDATION:

Staff recommends **approval** of the request subject to compliance with all applicable codes and ordinances and the following conditions:

1. The special use permit shall be granted to the applicant only or to any business or entity in which the applicant has a controlling interest. (P&Z) (SUP #99-0155)
2. Seating indoors, within the restaurant and the hotel lounge, shall be provided for no more than 165 patrons. (P&Z) (SUP #99-0155)
3. Outside dining facilities shall be provided for no more than 25 patrons as depicted on the attached plan. (P&Z) (SUP #99-0155)
4. The hours of operation shall be limited from 6:30 a.m. to midnight Sunday through Thursday, and from 6:30 a.m. to 1:00 a.m. on Fridays and Saturdays. The outdoor dining area shall be cleaned and washed at the close of each day of operation. (P&Z) (SUP #99-0155)
5. The applicant shall post the hours of operation at the entrance to the restaurant. (P&Z) (SUP #99-0155)
6. Live entertainment may be provided at the indoor restaurant as requested by the applicant. (P&Z) (SUP #99-0155)
7. CONDITION AMENDED BY STAFF: ~~No music or amplified sound shall be audible at the property line. (P&Z) (SUP #99-0155)~~ Music may be provided for the outdoor dining area subject to the following restrictions:
 - A) Music shall be limited to background, ambient music for diners.
 - B) Music shall be limited to acoustical instruments. No amplification of any type shall be permitted.

- C) No sound generation shall result in sound having a volume of 75 db(A) or more, at a distance greater than 10 feet from the place at which the sound is being generated or produced, for an aggregate duration of time greater than 60 seconds in any one hour period. Any sound that is plainly audible above the background noise level to a person of normal hearing acuity at a distance greater than 50 feet from the place at which the sound is being generated or produced shall be presumed to exceed 75 db(A) at 10 feet of distance and thus violate this condition, and the burden shall be on the person responsible for such sound generation to prove otherwise. (T&ES, P&Z)
8. On-site alcohol service is permitted; no off-premise alcohol sales are permitted. (P&Z) (SUP #99-0155)
 9. The applicant shall require that its employees who drive to work use off-street parking. (P&Z) (SUP #99-0155)
 10. No food, beverages, or other material shall be stored outside. (P&Z) (SUP #99-0155)
 11. Trash and garbage shall be placed in sealed containers which do not allow odors to escape and shall be stored inside or in a closed container which does not allow invasion by animals. No trash or debris shall be allowed to accumulate on-site outside of these containers. (P&Z) (SUP #99-0155)
 12. Litter on the site and on public rights-of-way and spaces adjacent to or within 75 feet of the premises shall be picked up at least twice a day and at the close of business, and more often if necessary, to prevent an unsightly or unsanitary accumulation, on each day that the business is open to the public. (P&Z) (SUP #99-0155)
 13. Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys, or storm sewers. (T&ES) (SUP #99-0155)
 14. The applicant shall control cooking odors and smoke from the property to prevent them from becoming a nuisance to neighboring properties, as determined by the Health Department. (Health) (SUP #99-0155)
 15. The applicant shall contact the Crime Prevention Unit of the Alexandria Police Department for a security survey for the business and a robbery awareness program for the employees. (Police) (SUP#99-0155)

16. The Director of Planning and Zoning shall review the special use permit one year after approval, and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions, (b) the director received a request from any person to docket the permit for review as a result of a complaint that rises to the level of a violation, or (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed. (P&Z) (SUP#2001-0003)
17. Signage shall be posted to assist traffic flow in the garage to the satisfaction of the Directors of Planning and Zoning and Transportation and Environmental Services. (PC) (SUP#2001-0003)
18. **STANDARD CONDITION ADDED BY STAFF: Meals ordered before the closing hour may be served, but no new patrons may be admitted and no alcoholic beverages may be served after the closing hour, and all patrons must leave by one hour after the closing hour. (P&Z)**

DISCUSSION:

1. The applicant, Hilton Alexandria Old Town by Harry Hart, requests special use permit approval to provide live entertainment outdoors at the Hilton's Seagar's restaurant at 1767 King Street.
2. The subject property is one lot of record with 160 feet of frontage on King Street and additional frontage on Commonwealth Avenue. The site is developed with a multi-story hotel.

The surrounding land uses include residential to the north, and mixed use buildings with generally ground floor retail and either office or residential above to the east, south and west. The King Street Metro Station lies to the west.

3. On January 22, 2000, City Council granted SUP #99-00155 for the operation of a restaurant with indoor and outdoor seating and limited entertainment for the indoor seating only. On March 17, 2001, City Council reviewed the restaurant's compliance with existing special use permit conditions, added one condition, and granted permission for the continued operation of the restaurant (SUP #2001-0003).
4. The applicant requests permission to provide live music for customers in the outdoor seating area at Seagar's restaurant. The outdoor seating area is located on the first floor of the hotel adjacent to Commonwealth Avenue, and has seating for 25 customers. The application materials indicate that the music will not be amplified and could include such musicians as a saxophonist or acoustical guitarist.
5. The applicant currently has permission to provide live entertainment inside the restaurant under the existing special use permit. The applicant did not request permission to provide live entertainment outdoors with the previously granted special use permits.
6. The proposed hours for musical performance are 4:00 p.m. to 8:00 p.m. daily.
7. No other changes are proposed to the operation of the restaurant.
9. Zoning: The subject property is located in the OCH/Office Commercial High zone. Section 4-1100 of the zoning ordinance allows a restaurant in the OCH zone only with a special use permit.

10. Master Plan: The proposed use is consistent with the King Street/Eisenhower Small Area Plan chapter of the Master Plan which designates the property for OCH/Office Commercial High zone use.

STAFF ANALYSIS:

Planning staff recommends approval of this proposal because it believes that the proposed music at the outdoor seating area could improve the vitality of the street and provide an amenity for outdoor dining patrons. Additionally, planning staff is willing to delete condition 7, which does not allow amplified sound to be audible at the property line, since the proposed non-amplified music will not likely be louder than the noise from existing traffic, and since the outdoor seating is located next to busy streets and across from the metro and railroad viaduct and is unlikely to have a significant impact on residential and commercial uses in the area.

Both Transportation and Environmental Services and Planning staff are concerned, however, that without limitations the addition of entertainment at this corner could conceivably prove troublesome for residents in nearby areas. Therefore, staff has included language in Condition #7 to limit outdoor music to ambient, background music without amplification. The proposed condition also incorporates the limitation from the noise ordinance that relates to uses in the Central Business District. Although that limitation does not apply to this property, and even within the Central Business District uses with a special use permit can have different standards, it is a recognized noise standard in the ordinance for some uses and one that, at least without more information and testing from the applicant, staff believes is feasible.

With that condition, staff recommends approval.

STAFF: Eileen P. Fogarty, Director, Department of Planning and Zoning;
Barbara Ross, Deputy Director;
Mary Hashemi, Urban Planner.

CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Transportation & Environmental Services:

- C-1 Applicant shall comply with Alexandria's Noise Control Code, Chapter 11, Section 5, which sets the maximum permissible noise level as measured at the property line.
- R-1 The provisions of the noise code that govern uses in the CBD (Central Business District) should be applied to limit the level of music at the proposed outdoor dining area. A condition of the SUP should be added that states:

No sound generation shall result in sound having a volume of 75 db(A) or more, at a distance greater than 10 feet from the place at which the sound is being generated or produced, for an aggregate duration of time greater than 60 seconds in any one hour period. Any sound that is plainly audible above the background noise level to a person of normal hearing acuity at a distance greater than 50 feet from the place at which the sound is being generated or produced shall be presumed to exceed 75 db(A) at 10 feet of distance and thus violate this condition, and the burden shall be on the person responsible for such sound generation to prove otherwise.

Code Enforcement:

- F-1 No comments.

Health Department:

- F-1 No comments.

Police Department:

- F-1 No objections.

APPLICATION for SPECIAL USE PERMIT # 2001-0098

PROPERTY LOCATION: 1767 King Street

TAX MAP REFERENCE: 63.04-06-24 ZONE: OCH

APPLICANT Name: LNR Alexandria Limited Partnership, d.b.a Hilton Alexandria Old Town

Address: 1000 Ridgeway Loop Rd., Suite 320, Memphis, TN 38120

PROPERTY OWNER Name: LNR Alexandria Limited Partnership, d.b.a Hilton Alexandria Old Town

Address: 1000 Ridgeway Loop Rd., Suite 320, Memphis, TN 38120

PROPOSED USE: Request for an amendment to a Special Use Permit to permit live instrumental

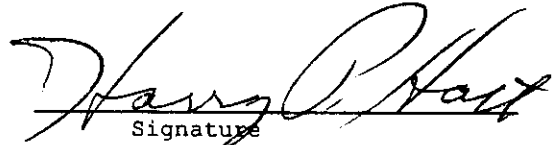
entertainment on the outdoor patio of an existing hotel restaurant.

expansion of an existing restaurant to allow outdoor live entertainment.
THE UNDERSIGNED hereby applies for a Special Use Permit in accordance with the provisions of Article XI, Section 11-500 of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notices on the property for which this application is requested, pursuant to Article XI, Section 11-301(B) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED hereby attests that all of the information herein provided and specifically including all surveys, drawings, etc., required to be furnished by the applicant are true, correct and accurate to the best of their knowledge and belief. The applicant is hereby notified that any written materials, drawings or illustrations submitted in support of this application and any specific oral representations made to the Planning Commission or City Council in the course of public hearings on this application will be binding on the applicant unless those materials or representations are clearly stated to be non-binding or illustrative of general plans and intentions, subject to substantial revision, pursuant to Article XI, Section 11-207(A)(10), of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

Harry P. Hart
Print Name of Applicant or Agent


Signature

HART, CALLEY, GIBBS & KARP, P.C.
Mailing Address

(703) 836-5757 (703) 548-5443
Telephone # Fax #

307 N. Washington St., Alex. VA 22314
City and State Zip Code

August 28, 2001
Date

=====DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY=====

Application Received: _____ Date & Fee Paid: _____ \$ _____

ACTION - PLANNING COMMISSION: _____

ACTION - CITY COUNCIL: _____

All Applicants must complete this form. Supplemental forms are required for child care facilities, restaurants, automobile oriented uses and freestanding signs requiring special use permit approval.

1. The Applicant is (*check one*) ☒ the Owner ☐ Contract Purchaser
☐ Lessee or ☐ Other: _____ of the subject property.

State the name, address and percent of ownership of any person or entity owning an interest in the applicant, unless the entity is a corporation or partnership in which case identify each owner of more than ten percent.

<u>Flautt/Alexandria, Inc.</u>	<u>1.00%</u>	<u>Virginia</u>
<u>LNR Alexandria Holdings, Inc.</u>	<u>1.00%</u>	<u>Virginia</u>
<u>Flautt/Alexandria, LP</u>	<u>19.00%</u>	<u>Tennessee</u>
<u>LNR Alexandria LP Inc.</u>	<u>79.00%</u>	<u>Virginia</u>

If property owner or applicant is being represented by an authorized agent such as an attorney, realtor, or other person for which there is some form of compensation, does this agent or the business in which the agent is employed have a business license to operate in the City of Alexandria, Virginia?

☒ Yes. Provide proof of current City business license.

☐ No. The agent shall obtain a business license prior to filing application, if required by the City Code.

2. Submit a floor plan and a plot plan with parking layout of the proposed use. One copy of the plan is required for plans that are 8 1/2" x 14" or smaller. Twenty-four copies are required for larger plans or if the plans cannot be easily reproduced. The planning director may waive requirements for plan submission upon receipt of a written request which adequately justifies a waiver. This requirement does not apply if a Site Plan package is required.

See Exhibit No. 1 attached.

NARRATIVE DESCRIPTION

4. The applicant shall describe below the nature of the request in detail so that the Planning Commission and City Council can understand the nature of the operation and the use, including such items as the nature of the activity, the number and type of patrons, the number of employees, the hours, how parking is to be provided for employees and patrons, and whether the use will generate any noise. (Attach additional sheets if necessary.)

This request for an amendment to a Special Use Permit (#2001-003) is to permit The Hilton Alexandria, Old Town's restaurant (named Seagar's) to provide live instrumental entertainment on the outdoor patio of the restaurant. The music will not be amplified in any manner. Condition No. 6 of the approved S.U.P. permits live entertainment in the indoor seating area of the restaurant. The restaurant currently provide a piano player in the evenings for entertainment. The restaurant wishes to provide instrumental entertainment, for example, a saxophone player or an acoustical guitar player, on a daily basis on the outdoor patio, weather permitting, between the hours of 4:00 to 8:00 p.m.

USE CHARACTERISTICS

4. The proposed special use permit request is for: (check one)

- ☐ a new use requiring a special use permit,
☐ a development special use permit,
☐ an expansion or change to an existing use without a special use permit,
☒ an expansion or change to an existing use with a special use permit, **S.U.P. # 2001-0003**
☐ other. Please describe: _____

5. Please describe the capacity of the proposed use:

A. How many patrons, clients, pupils and other such users do you expect? Specify time period (i.e., day, hour, or shift).

Maximum Restaurant - 110 Breakfast, 110 lunch, 150 Dinner

B. How many employees, staff and other personnel do you expect? Specify time period (i.e. day, hour, or shift).

20 - 6:30 am- 4 p.m.; 26 - 4 p.m. - 1 a.m.

6. Please describe the proposed hours and days of operation of the proposed use:

Day:

Existing Restaurant:

Sunday-Thursday

Friday

Saturday

Proposed Use:

Sunday - Saturday

Hours:

6:30 a.m. - 12:00 a.m.

6:30 a.m. - 1:00 a.m.

6:30 a.m. - 1:00 a.m.

4:00 p.m. - 8:00 p.m. (weather permitting)

7. Please describe any potential noise emanating from the proposed use:

A. Describe the noise levels anticipated from all mechanical equipment and patrons.

Minimal from the restaurant. Regarding outdoor seating, only instrumental entertainment (i.e. saxophone) and we expect minimal noise from patrons.

B. How will noise from patrons be controlled?

Noise will be controlled by Hotel management through communicating to patrons the level of noise that is permissible.

8. Describe any potential odors emanating from the proposed use and plans to control them:

No odors are expected from the kitchen to the outside. The only odors outdoors would come from the individual dishes being served. Very minimal odors expected.

9. Please provide information regarding trash and litter generated by the use:

A. What type of trash and garbage will be generated by the use?

Normal for proposed use (i.e. food waste, paper waste, glass bottle and can waste).

B. How much trash and garbage will be generated by the use.?

Normal for proposed use (i.e. 8-10 yard compactor - filled weekly; cardboard, glass bottles, cans etc. to be recycled).

C. How often will trash be collected?

Once weekly or more often as needed.

D. How will you prevent littering on the property, streets and nearby properties?

Proper trash storage within the facilities. Diligence of staff to keep all indoor and outdoor areas spotless and clean at all times.

10. Will any hazardous materials, as defined by the state or federal government, be handled, stored, or generated on the property?

☐ Yes. ☒ No.

If yes, provide the name, monthly quantity, and specific disposal method below:

11. Will any organic compounds, for example, paint, ink, lacquer thinner, or cleaning or degreasing solvent, be handled, stored, or generated on the property?

☒ Yes. ☐ No.

If yes, provide the name, monthly quantity, and specific disposal method below:

Cleaning supplies only.

12. What methods are proposed to ensure the safety of residents, employees and patrons?

Material Safety Data Sheets, Employee training programs and proper storage techniques.

ALCOHOL SALES

13. Will the proposed use include the sale of beer, wine, or mixed drinks?

☒ Yes. ☐ No.

If yes, describe alcohol sales below, including if the ABC license will include on-premises and/or off-premises sales. Existing uses must describe their existing alcohol sales and/or service and identify any proposed changes in that aspect of the operation.

On premises only. We estimate approx. 2 million dollars in beverage sales serving beer,
wine and liquor (mixed drinks).

PARKING AND ACCESS REQUIREMENTS

14. Please provide information regarding the availability of off-street parking:
- A. How many parking spaces are required for the proposed use pursuant to section 8-200 (A) of the zoning ordinance?
169 - 241 Room @ .7 parking spaces per room, No additional parking is required for the restaurant (8-400 (B)(8)).
- B. How many parking spaces of each type are provided for the proposed use:
100 Standard spaces
116 Compact spaces
_____ Handicapped accessible spaces.
_____ Other.
- C. Where is required parking located? ☒ on site ☐ off-site (*check one*)
If the required parking will be located off-site, where will it be located?

Pursuant to section 8-200 (C) of the zoning ordinance, commercial and industrial uses may provide off-site parking with 500 feet of the proposed use, provided that the off-site parking is located on land zoned for commercial or industrial uses. All other uses must provide parking on-site, except that off street parking may be provided within 300 feet of the use with a special use permit.
- D. If a reduction in the required parking is requested, pursuant to section 8-100(A)(4) or (5) of the zoning ordinance, complete the PARKING REDUCTION SUPPLEMENTAL APPLICATION.
15. Please provide information regarding loading and unloading facilities for the use:
- A. How many loading spaces are required for the use, per section 8-200 (B) of the zoning ordinance? 0
- B. How many loading spaces are available for the use? 1
- C. Where are off-street loading facilities located? In the Hotel's loading dock off Cameron Street.

D. During what hours of the day do you expect loading/unloading operations to occur?

7:00 a.m. to 5:00 p.m.

E. How frequently are loading/unloading operations expected to occur, per day or per week, as appropriate?

5-7 per day Monday-Friday

16. Is street access to the subject property adequate or are any street improvements, such as a new turning lane, necessary to minimize impacts on traffic flow?

Street Access is Adequate.

SITE CHARACTERISTICS

17. Will the proposed uses be located in an existing building? ☒ Yes. ☐ No.

Do you propose to construct an addition to the building? ☐ Yes. ☒ No.

How large will the addition be? _____ square feet.

18. What will the total area occupied by the proposed use be?

9,515 sq. ft. (existing) + _____ sq. ft. (addition if any) = 9,515 sq. ft. (total) -
this includes the kitchen (3,025 sq.ft.), the restaurant dining area and dining rooms (3,661 sq.ft.) and the patio (1,331 sq.ft.); the lounge (1,498 sq.ft.)

21. The proposed use is located in (check one):

☒ a stand alone building ☐ a house located in a residential zone ☐ a warehouse

☐ a shopping center. Please provide name of the center: _____

☐ an office building. Please provide name of the building: _____

☐ other, please describe: _____

DRAFT

NOTICE OF PUBLIC HEARINGS

Certified Mail

Date: October 18-29, 2001

Dear Property Owner:

You are hereby noticed of the following public hearings to be held by the Alexandria Planning Commission and the Alexandria City Council on the issue described below:

ALEXANDRIA PLANNING COMMISSION

Date: November 8, 2001

7:30 P.M., City Hall

301 King Street

City Council Chambers

Alexandria, Virginia

ALEXANDRIA CITY COUNCIL

Date: November 17, 2001

9:30 A.M., City Hall

301 King Street

City Council Chambers

Alexandria, Virginia

ISSUE DESCRIPTION: Request for an amendment to a Special Use Permit to permit live instrumental

entertainment on the outdoor patio of an existing hotel restaurant.

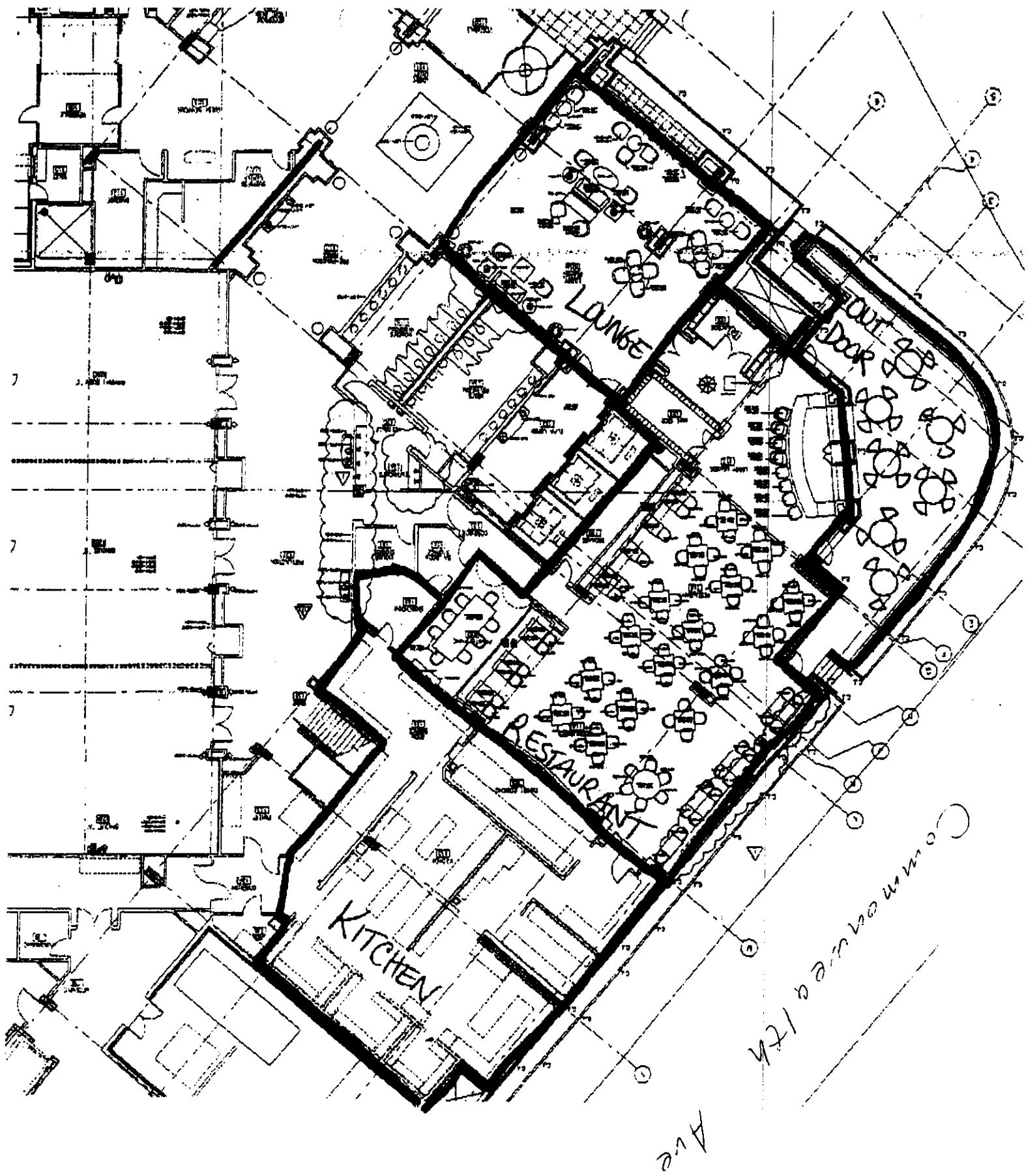
PROPERTY ADDRESS: 1767 King Street

TAX MAP REFERENCE: 63.04-06-24

As a citizen and party in interest, you are invited to attend these meetings and express your views concerning the above issue.

If you have any questions regarding the request you may call 703-836-5757.

Very truly yours,



APPLICATION for SPECIAL USE PERMIT # 2001-0098

PROPERTY LOCATION: 1767 King Street

TAX MAP REFERENCE: 63.04-06-24 ZONE: OCH

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Harry P. Hart
Print Name of Applicant or Agent

Harry P. Hart
Signature

HART, CALLEY, GIBBS & KARP, P.C.
Mailing Address

(703) 836-5757 (703)548-5443
Telephone # Fax#

307 N. Washington St., Alex. VA 22314
City and State Zip Code

August 28, 2001
Date

=====DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY=====

Application Received: _____ Date & Fee Paid: _____ \$ _____

ACTION - PLANNING COMMISSION: 11/08/01 RECOMMEND APPROVAL 7-0

ACTION - CITY COUNCIL: 11/17/01PH -- CC approved the Planning Commission recommendation.